

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 355  
Family Law – Custody Evaluators – Qualifications and Training  
**DATE:** January 13, 2021  
(1/26)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 355. This bill would require all court-appointed or court-approved custody evaluators to have attained at least a master's degree in certain fields and have certain experience obtained through observation under clinical supervision or the performance of custody evaluations. Beginning October 1, 2022, custody evaluators must complete at least 60 hours of training on certain topics before appointed or approved by a court and complete at least 10 hours of continuing education and training every two years. The bill would also require courts to provide information about the role, availability, and cost of a custody evaluator in all contested child support, custody, and visitation cases and required custody evaluators provide parties written information regarding their policies, procedures, fees, and costs for the evaluation.

In 2016, the Court of Appeals, exercising its rule-making authority, adopted Maryland Rule 9-205.3 (the Rule), which governs custody evaluations ordered by circuit courts. If one is needed in a case, the parties will be directed to one and courts' Differentiated Case Management plans currently incorporate custody evaluations.

The purpose of appointing a custody evaluator is to provide expert professional assistance to courts in making difficult custody decisions. Among other things, the Rule imposes eligibility requirements, by education and training, for custody evaluators. The courts are in the best position to determine the eligibility requirements for custody evaluators; it is not necessary for the legislature to impose its own education and training requirements for custody evaluators in place of the eligibility requirements adopted by the Court of Appeals.

Sections 9-110 (a) and (b) of the proposed bill are essentially the same as the qualifications section of Rule 9-205.3(d), except (b)(1) of the proposed bill states that all custody evaluators must have a master's degree. The educational requirements in the Rule all are master's degree level and above, so the only effect of (b)(1) would be to

eliminate the waiver provision of the Rule. That provision was included for the sole purpose of ensuring that court-employed custody evaluators who did not meet the educational qualifications and were working for the courts prior to the adoption of the Rule in 2016 would not lose their jobs. If this legislation is enacted, it would affect two Anne Arundel Circuit Court employees.

The individuals who are eligible to serve as custody evaluators under the Rule are licensed mental health care providers. The Rule states that they must comply with the continuing education requirements of their fields. For example, eligible psychologists and social workers must complete 40 hours of continuing education in their fields every two years. Also, to maintain their eligibility under the Rule they must have training or experience observing or performing custody evaluations and must have “current knowledge” about 1) domestic violence, 2) child neglect and abuse; 3) family conflict and dynamics; 4) child and adult development; and 5) the impact of divorce and separation on children and adults. These topics encompass the eleven areas of training set forth in the proposed legislation.

The requirement that custody evaluators have experience in the areas set forth in (a)(3) of the bill will erect roadblocks to courts’ use of custody evaluations. Evaluators who do not have such experience would be disqualified and the requirement will make it more difficult for practitioners to become qualified. There is already a limited pool of qualified professionals available to do this work, especially in rural parts of the state. This requirement would further limit that pool, as would the requirement that evaluators complete at least 60 hours of initial training in certain topics before court appointment or approval. The topics that must be covered in initial training are both specific and numerous and there is no single existing training program that satisfies them all. The bill does not specify who will provide the training, how it would be funded, or given an indication of how it will be available before the October 1, 2022 effective date of the training requirement.

The bill requires the court to provide information to the parties regarding the role, availability, and cost of custody evaluations in the jurisdictions. It is not evident why the court would need to provide this information to parties in child support actions. In addition, there are jurisdictions that do not currently have custody evaluators who live or work in the jurisdiction so providing this information would be problematic. It is not appropriate for the court to investigate and provide the cost of a custody evaluator.

Further, Section (e) of the proposed legislation states that the Court of Appeals may adopt rules to implement its provisions. The Court of Appeals has rule-making authority regardless; this provision is violative of the separation of powers doctrine.

Finally, this bill is unnecessary as there currently exists a Custody Evaluator Standards and Training Workgroup which includes various stakeholders and chaired by Judge Deborah Eyler which has been studying this issue over several months. The Workgroup has made recommendations to the Judicial Council regarding custody evaluators to ensure that courts receive trustworthy and accurate assessment evidence.

cc. Hon. Mary Beth Carozza  
Judicial Council  
Legislative Committee  
Kelley O'Connor